

MINUTES
STEERING COMMITTEE MEETING
JUNE 14, 2004

Attendees: D. Kovacs, B. Cox, D. Paylor, B. Burnley, M. West, T. Botkins, J. Kaufman, S. Miles, F. Sanders, K. Lentz, D. Paylor, J. Hassell, T. Wagner, B. Hulburt, M. Rubin

The meeting began with a discussion of process issues involving the Steering Committee. It is understood that the Steering Committee is not a decision-making body. Any consensus that is reached within the Steering Committee is subject to discussion by the respective interest groups that will be brought back to the Steering Committee for consideration. Minutes of each of the Steering Committee meetings will be prepared by the facilitators and circulated to all members of the TAC.

After these discussions, the Committee sought a description of the “big picture” (i.e. the State Water Resources Plan) and how the planning and permitting functions would fit together. The big picture is governed by the principles set out in current law and embodied further in an existing DEQ Policy Statement. There are three components of planning, denominated as three phases.

Phase I is the planning segment. It would include a characterization of the water resources, an initial needs determination, and possible sources of water. This phase was described as “little pictures making up a big picture”. The local and regional plans generated in response to the Phase I requirements would be included as a part of the State Plan.

Phase II is the bridge between planning and preparation. During this phase, the information gleaned in Phase I would be analyzed and integrated for further use in assessing the viability of proposed projects and arriving at a more detailed needs determination. The state role would increase in this phase in conducting more in-depth analysis of information and as a facilitator among the various permitting agencies.

Phase III deals with specific projects in the permitting process.

During this discussion, the following issues were identified for further consideration:

1. Allocation: planning is not an allocation scheme
2. Conflict resolution between localities that intend to use the same water source – what is the scope, timing and effect of these efforts
3. Streamlining
4. Advocacy – generally discussed as arising after all state permits were granted.
5. Complimentarity in planning between instream and offstream uses
6. Phasing of local plan requirements (at what point will everyone have done a Phase I plan? How do you handle situations when someone wants a permit but the locality has not done a plan)?

7. Public participation elements in the phases
8. What happens when a new industry shows up that was not contemplated in a local or regional plan? Must a locality go through Phases I and II before a permit can be applied for or approved?
9. Municipal water supply vs. locality
10. Interaction of land use, water quality and water supply

The next discussion centered on the meaning of a Phase I approval as contemplated in the draft regulation. This approval was generally characterized as a “rebuttable presumption of validity subject to new information being received”. It was deemed to be an approval of the locality’s process in meeting the regulatory requirements and a statement that the resources had been properly characterized. It would effectively certify the completeness of the plan and that a creditable effort was made to meet the requirements.

It was clearly stated that such an approval did not entitle anyone to anything in regard to a permit. A Phase I approval would be issued by the Water Control Board and would be a decision subject to appeal and other statutory procedural safeguards. The Board could delegate Phase I approval to staff. The result would be a plan that provides a picture of the resource, an alignment between the state and locality on drought response plans, and an identification of potential conflicts and other issues.

This discussion raised the following issues:

1. Use of the word “reasonable” in the draft regulation caused concern
2. It needs to be clear that approval does not imply that water has been allocated in accordance with that plan, nor that a permit is a foregone conclusion
3. There may be a need to add a provision to the regulation regarding notification to the submitting locality once its Phase I plan has been approved
4. If the Board makes these determinations regarding approval, a concern was voiced that a streamlined Board process to handle these plans would be necessary
5. There may be a need for a statement in the regulation that a Phase I approval does not have any impact on current uses or existing permits.

Phase II was discussed as an “Assessment”. A number of interests were identified in regard to this phase. First, nothing in Phase II should prejudice the permitting process. Instead, the assessment should provide direction regarding the viability of different alternatives to a locality with an identified need.

A needs determination which meets the regulatory requirements should be endorsed by the Board. The possibility of this endorsement will encourage the submitters to present a comprehensive product. The assessment should provide an opportunity for further analysis of the information provided in Phase I and its integration into the “big picture”.

There was fairly extensive conversation about whether it was appropriate for Board or staff to work with Phase II. It was generally agreed that in order for it to be a meaningful step in narrowing viable options and giving guidance to the submitter and, more significantly, in order for their to be a meaningful endorsement of the needs determination, that aspect would need to be done by the Board. Further discussion needs to be had as to exactly how the integration of the Board’s responsibilities and those of the staff during this Phase would be handled.

In addition, in consideration of these various interests, the Steering Committee discussed the following aspects of a Phase II assessment:

1. The Board would review and, if it met regulatory requirements, endorse a thorough needs determination which would be utilized throughout a Phase III permitting process.
2. The assessment would, if properly done, certify that the plan was done in compliance with the regulatory requirements of Phase II and was complete.
3. It would contain comments from all permitting agencies on the viability of proposed projects to meet the identified need which would provide direction to a locality or entity seeking a permit.
4. It would identify outstanding issues that needed to be addressed including conflicts between jurisdictions concerning the use of the same water source.
5. A Phase II assessment would not be “incorporated” into the state plan but the data developed would be utilized in the state plan.
6. Other than the Board endorsement of a needs determination, all other aspects of a Phase II assessment would be handled by staff.

These aspects are all subject to further discussion among the interest groups. This discussion also raised certain issues in regard to the draft regulation. In that regard, the following were proposed:

- 9VAC25-780-160(g) would be stricken in regard to incorporation.
- 9VAC 25-780-160(c)(6) would be revised to address what would occur if certain matters are not resolved.
- 9VAC 25- 780-160(c)(5) would be revised to state “alternative(s) is ... consistent with 9VAC780-140(B) and with the criteria and guidelines pertaining to instream uses as contained in the State Water Resources Plan.”

In addition, further discussion was suggested regarding the timing and effect of conflict resolution efforts.

It was suggested that the next meeting of the Steering Committee would address questions regarding streamlining, advocacy and a review of the draft regulation.

The meeting was adjourned until June 24th at 8:30 at the Piedmont Office of DEQ.